

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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AMAZON.COM, LLC and AMAZON SERVICES,
LLC,

Plaintiffs,

v.

NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE; ROBERT L.
MEGNA, in his Official Capacity as Commissioner
of the New York State Department of Taxation and
Finance; THE STATE OF NEW YORK; and
DAVID A. PATERSON, in his Official Capacity as
the Governor of the State of New York,

Defendants.
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Index No.

IAS Part
Justice

VERIFIED COMPLAINT

08601247

Plaintiffs Amazon.com, LLC and Amazon Services, LLC (collectively "Amazon"), by
their undersigned attorneys, Gibson, Dunn & Crutcher LLP, allege for this Complaint as follows:

NATURE OF THE CASE

1. This case challenges the constitutionality of a newly enacted New York tax statute, N.Y. Tax Law § 1101(b)(8)(vi) ("the Statute"), that requires out-of-state Internet retailers with no physical presence in the State to collect New York sales and use taxes.

2. It has long been the case in New York State that "vendors" who affirmatively "solicit business" in the State through "employees, independent contractors, agents or other representatives" within the State must collect and pay New York sales and use taxes. N.Y. Tax Law §§ 1101(b), 1131(1). Failure to do so results in civil and criminal penalties. *Id.* §§ 1145, 1817. Consistent with the Commerce Clause, prior to enactment of this new Statute, New York never imposed this tax-collection obligation on out-of-state retailers such as Amazon with no

physical presence in New York and no in-state representatives soliciting sales on the retailers' behalf. Accordingly, New York never required Amazon to collect sales and use taxes, and Amazon never collected such taxes.

3. On April 9, 2008, the New York State Legislature enacted a new Statute that presumes a retailer "solicits" business in the State if any in-state entity is compensated for directly or indirectly referring customers to the retailer. Because some independently operated, New York-based websites post advertisements with links to Amazon and are compensated for these advertisements, Amazon is now presumed to have engaged in "solicitation" under this Statute and, thus, must collect New York sales and use taxes on *all* of its sales to New Yorkers or face hefty civil and criminal penalties—despite the fact that Amazon lacks any physical presence in New York and that no solicitation by Amazon actually exists. This presumption is effectively irrebuttable. Accordingly, Amazon seeks a declaratory judgment that the Statute is invalid, illegal, and unconstitutional, facially and as applied to Amazon, for the following reasons:

(a) First, the Statute violates the Commerce Clause of the United States Constitution, both facially and as applied to Amazon, because it imposes tax-collection obligations on out-of-state entities such as Amazon who have no substantial nexus with New York;

(b) Second, the Statute violates the Due Process Clauses of the United States and New York Constitutions, both facially and as applied to Amazon, in that it effectively creates an irrebuttable presumption of "solicitation" and is overly broad and vague; and

(c) Third, the Statute violates the Equal Protection Clauses of the United States and New York Constitutions because it intentionally targets Amazon.

THE PARTIES

I. Plaintiffs

4. Amazon.com LLC is a limited liability company formed in 1999 in the State of Delaware. Amazon Services LLC is a limited liability company formed in 2003 in the State of Nevada. The plaintiffs are referred to here collectively as "Amazon." Amazon's principal corporate offices are located in Seattle, Washington. Amazon's retail website, *www.amazon.com*, opened its virtual doors to the World Wide Web in July 1995, and today offers "Earth's Biggest Selection," where customers worldwide can find virtually anything they might want to buy online. Amazon maintains no physical presence in the State of New York, and there are no activities performed by it or on its behalf in the State of New York that are significantly associated with its ability to generate sales to customers located in the State.

II. Defendants

5. Defendant New York State Department of Taxation and Finance ("DTF") is an agency of the State of New York organized under section 170 of the Tax Law. It maintains offices at 1740 Broadway, New York, New York, as well as at the State Capitol, Albany, New York. DTF is responsible for administering and enforcing the tax laws of New York State, including the administration and collection of sales and use taxes.

6. Defendant Robert L. Megna (the "Commissioner") is the Commissioner of the New York State Department of Taxation and Finance. The Department of Taxation and Finance maintains an office at 1740 Broadway, New York, New York, as well as at the State Capitol, Albany, New York. As the principal officer of the Department of Taxation and Finance, the

Commissioner is responsible for administering and enforcing the tax laws of New York State, including the administration and collection of sales and use taxes. Amazon brings this action against the Commissioner in his official capacity only.

7. Defendant State of New York is organized under the New York Constitution.

8. Defendant David A. Paterson (the "Governor") is the Governor of the State of New York. The Governor maintains an office at 633 Third Avenue, New York, New York, as well as at the State Capitol, Albany, New York. As the State's Chief Executive Officer, the Governor is responsible for executing the laws of New York State. Amazon brings this action against the Governor in his official capacity only.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action, pursuant to CPLR 301, 307, and 3001.

10. Venue properly lies in New York County, pursuant to CPLR 503.

BACKGROUND

I. The Commerce Clause Prevents New York State from Imposing Tax-Collection Obligations on Out-of-State Entities Absent a "Substantial Nexus" with the State

11. The Commerce Clause, U.S. CONST. art. I, § 8, cl. 3, prohibits a state from imposing sales or use tax-collection obligations on an out-of-state retailer unless the retailer has a "substantial nexus" with the taxing state. *See, e.g., Quill Corp. v. North Dakota*, 504 U.S. 298, 311 (1992). A retailer does not have a "substantial nexus" unless that retailer has a sufficient "physical presence" in the state, *id.* at 311, including, for example, presence in the form of solicitation on the retailer's behalf by sales representatives located in the state that is "significantly associated with the taxpayer's ability to establish and maintain a market in the state." *Tyler Pipe Indus., Inc. v. Wash. State Dep't of Revenue*, 483 U.S. 232, 250-51 (1987); *see also, e.g., Quill*, 504 U.S. at 301. Advertising alone is insufficient to establish a substantial

nexus, and even a robust mail-order business directed at a state does not satisfy the nexus requirement. *See, e.g., Quill*, 504 U.S. at 302-03 & n.6.

II. Consistent with the United States Constitution, New York Law Did Not Impose Any Tax-Collection Obligations on Amazon Prior to Enactment of the Statute

12. The New York Tax Law (the "Tax Law") defines the terms "persons required to collect tax" and "person required to collect any tax imposed by this article" to include, among others, "every *vendor* of tangible personal property or services." N.Y. Tax Law § 1131(1) (emphasis added).

13. The Tax Law defines a "vendor" to include, among other things, any "person who *solicits* business . . . by employees, independent contractors, agents or other representatives." N.Y. Tax Law § 1101(b)(8)(i)(C)(I) (emphasis added).

14. The Tax Law does not define the term "solicits" as used in Section 1101(b)(8)(i)(C)(I).

15. Under the Tax Law, "a person . . . shall not be deemed to be a vendor [for purposes of collecting sales and use taxes] solely by reason of (1) having its advertising stored on a server or other computer equipment located in this state (other than a server or other computer equipment owned or leased by such person), or (2) having its advertising disseminated or displayed on the Internet by an individual or entity subject to tax" under certain other provisions of the Tax Law. N.Y. Tax Law § 12(c).

16. The Tax Law provides that "[e]very person required to collect any tax imposed by this article" governing sales and use taxes "shall file with the Commissioner a certificate of registration." N.Y. Tax Law § 1134(a).

17. Within five days of receipt of the "certificate of registration," the Commissioner issues the vendor a "certificate of authority empowering the registrant to collect" sales and use taxes on applicable sales to New York customers. N.Y. Tax Law § 1134(a)(2).

18. If a person is required to register as a "vendor" but fails to do so, that person is subject to significant penalties under New York law, both civil and criminal. *See* N.Y. Tax Law §§ 1145, 1817. Such penalties also apply if a person has registered as a vendor and has received a certificate of authority from the Commissioner, but that person fails to collect the tax, separately state the tax on its bills and receipts, or file returns and/or remit the tax to the State.

See id.

19. Amazon has never been deemed to have "solicit[ed]" business through an employee, independent contractor, agent, or other representative under Section 1101(b)(8)(i)(C)(I) of the Tax Law, or otherwise under New York law. None of the in-state advertisers with whom Amazon has associated has ever been considered an employee, independent contractor, agent, or other representative of Amazon under any provision of the Tax Law. Accordingly, Amazon has never been required to register as a "vendor" under the Tax Law, has never received from New York a "certificate of authority" to collect taxes, and has never collected sales or use taxes on any of its sales to New York customers.

III. Amazon Lacks a "Substantial Nexus" with New York

20. Amazon has no physical presence in New York. It does not own, lease, or otherwise occupy any physical property in the State, and none of its employees works or resides in the State. Amazon's goods are sold over the Internet through its own websites and shipped to consumers within the State. Title to goods purchased from Amazon passes to the purchaser at the point of origin of the shipment, rather than at the point of delivery to the purchaser.

Accordingly, Amazon's only contact with New York residents is by mail, wire, or common carrier.

21. Nor does Amazon have any representatives in New York soliciting sales on its behalf. Amazon allows independent third parties located around the world to advertise Amazon.com on their own websites by joining Amazon's "Associates Program." The process of enrolling as an advertiser is a simple—and in almost every case completely automated—one that is conducted by submitting an online application via Amazon's website. Under this program, advertisers can place one or more of a variety of different Amazon advertisements on their own websites. These Amazon advertisements generally have links enabling visitors to "click through" to Amazon's website from the advertiser's website. All such advertisers operate independently from Amazon, and they alone choose the timing, format, and placement of the Amazon advertisements on their websites.

22. Associates Program advertisers do not solicit or consummate sales on behalf of Amazon and are not authorized to act as Amazon's agents. The Operating Agreement governing the program provides:

[N]othing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. [Advertisers] will have no authority to make or accept any offers or representations on [Amazon's] behalf. [Advertisers] will not make any statement, whether on [the advertiser's website] or otherwise, that reasonably would contradict anything in this Section.

Operating Agreement, Amazon Services, LLC Associates Program, available at <http://affiliate-program.amazon.com/gp/associates/agreement> (last visited April 17, 2008). Once a visitor to an advertiser's website clicks through to Amazon's website using the links in the advertisement, all purchases made by that visitor take place solely through Amazon, all customer inquiries are

handled only by Amazon, and all products are shipped directly to the consumer by Amazon, its corporate affiliates, or other sellers without any involvement of the advertiser.

23. Associates Program advertisers are compensated by Amazon for purchases made by the visitors whom they refer to Amazon's website. If a customer clicks on an Amazon advertisement that appears on an advertiser's website and then purchases a product from Amazon, the advertiser receives a percentage of the proceeds of the sale.

24. Membership in the Associates Program does not depend on residence, and Amazon does not track the legal residence of advertisers who participate. Advertisers are simply required to provide contact information, which includes an address.

25. Hundreds of thousands of independent websites advertise Amazon by participating in the Associates Program. Thousands of them have provided Amazon with addresses in New York. However, Amazon has no way of knowing whether these advertisers, or other advertisers who provide addresses in other states, are legal residents of New York.

26. The activities of advertisers that participate in the Associates Program are not significantly associated with Amazon's ability to generate revenue from selling products to customers in New York.

IV. The Statute Creates an Improper Presumption of "Nexus"

A. The Legislature Enacts this Statute

27. The Governor included the Statute as part of his recommendations of proposed substantive legislation to be enacted in furtherance of the Fiscal Year 2008-09 budget (New York State's Fiscal Year begins on April 1 and ends on March 31). The Statute ultimately appeared in Part OO-1 of Senate Bill No. 6807-C and Assembly Bill No. 9807-C. Part OO-1 of these bills provides:

Paragraph 8 of subdivision (b) of section 1101 of the tax law is amended by adding a new subparagraph (vi) to read as follows:

For purposes of subclause (I) of clause (C) of subparagraph (i) of this paragraph, *a person making sales of tangible personal property or services taxable under this article ("seller") shall be presumed to be soliciting business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, if the cumulative gross receipts from sales by the seller to customers in this state who are referred to the seller by all residents with this type of an agreement with the seller is in excess of ten thousand dollars during the preceding four quarterly periods ending on the last day of February, May, August, and November. This presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller that would satisfy the nexus requirements of the United States constitution during the four quarterly periods in question. (Emphasis added.)*

28. It further provides: "This act shall take effect immediately and shall apply to sales made, uses occurring, and services rendered on or after the date this act shall have become a law."

29. The New York State Senate and New York State Assembly approved the measure on April 9, 2008.

30. This Statute was intended to impose tax-collection obligations on out-of-state Internet retailers such as Amazon.

31. Nonetheless, the Statute, as drafted, on its face would also impose tax-collection obligations on *non*-Internet out-of-state retailers who pay New York print media, television or radio outlets to advertise their products and thereby refer New York customers to buy them, provided that the resulting sales reach a certain combined annual dollar minimum.

32. On information and belief, New York officials have advised interested parties that they consider the Statute to be applicable only to out-of-state Internet retailers who compensate New York residents for advertising their products and thereby referring customers to buy them.

33. For purposes of this Complaint, Amazon assumes that its cumulative gross receipts from sales to customers in New York who were referred to Amazon by advertisers located in New York in the four quarterly periods preceding the enactment of the Statute exceed the statutory threshold amount of \$10,000 per year and, thus, that the Statute's presumption of solicitation applies to Amazon.

B. The Impact of this Statute

34. With the enactment of this Statute, the Legislature has effectively eliminated the "substantial nexus" requirement of the Commerce Clause by creating a presumption that Amazon and other similarly situated Internet retailers solicit in-state customers. The statutory definition of "vendor" itself has not changed; it still includes, among other things, any "person who *solicits* business . . . by employees, independent contractors, agents or other representatives." N.Y. Tax Law § 1101(b)(8)(i)(C)(I) (emphasis added). But because some of the advertisers that participate in the Associates Program might be considered "resident[s]" of New York, the Statute presumes that Amazon (and any other similar retailer) "solicits" business in New York through its New York-resident advertisers. *See* N.Y. Tax Law § 1101(b)(8)(vi). The burden shifts to Amazon and similar retailers to *disprove* the presumption as to each of the thousands of New York-based advertisers that "directly or indirectly refers" them customers. If Amazon cannot rebut this presumption, the Statute includes Amazon within New York's definition of a "vendor" and requires Amazon to collect and remit sales and use taxes on *all* its sales to New York residents. This Statute thus subjects out-of-state retailers to New York tax-

collection obligations based on nothing more than advertising in New York, although advertising does not constitute a “substantial nexus” under the Commerce Clause.

35. This new statutory presumption is effectively irrebuttable because it requires Amazon to prove that “the resident with whom [Amazon] has an agreement did not engage in any solicitation in the state on behalf of [Amazon] that would satisfy the nexus requirements of the United States constitution during the four quarterly periods in question.” N.Y. Tax Law § 1101(b)(8)(vi). As a practical matter, this burden is impossible to meet.

36. First, Amazon does not and cannot determine whether the independent online advertisers that participate in the Associates Program are “residents” of New York.

37. Second, even if Amazon were able to identify New York “resident” advertisers, it would be impossible for Amazon to prove that each and every one of the thousands of third-party website operators participating in the program did not “directly or indirectly” engage in solicitation in New York sufficient to create “nexus” for Amazon, even if none of them did. These online advertisers operate completely independently from Amazon. They alone choose the timing, format, and placement of the Amazon advertisements on their websites. Amazon therefore is not in a position to determine—let alone *disprove*—that a specific advertisement on a particular website, or any other online or offline activities of independent third parties over which Amazon has no involvement or control, qualifies as a direct or indirect solicitation on behalf of Amazon.

38. As a result, the Statute’s presumption—that all New York resident advertisers necessarily are engaging in such solicitation activity on behalf of Amazon in the State—is effectively irrebuttable, even though it is not true. Because physical presence and solicitation by

in-state residents is required to establish a "substantial nexus," the presumption of solicitation operates to effectively eliminate the nexus requirement under the Commerce Clause.

39. The Statute is also impermissibly vague and overbroad in that it requires out-of-state retailers (even those without a physical presence in the State) to collect New York sales and use taxes if a resident advertiser "indirectly" refers customers to the retailer for a commission or other consideration (provided that the retailer has more than \$10,000 in New York sales resulting from such agreements during the prior year). Premising tax-collection obligations—and thus significant civil and criminal penalties for non-collection—on "indirect" referrals by an advertiser makes it impossible for retailers to know if they are in violation. Moreover, this tax-collection obligation applies *unless* the out-of-state retailer marshals enough evidence to prove *every year* that *every* resident advertising its products is *not* engaging in an "*indirect*" solicitation, putting the retailer in the untenable position of having to divine and disprove "indirect" solicitation.

40. The Statute is also impermissibly overbroad because it presumes that all New York "resident" advertisers are necessarily targeting consumers in New York and that their advertisements are, in fact, reaching those consumers. Because of the geographically untethered nature of the Internet, however, an advertisement on a New York "resident's" website is no more likely to reach New York consumers than any other state's consumers.

AS AND FOR A FIRST CAUSE OF ACTION

**For Declaratory Relief
(Commerce Clause)**

41. Amazon repeats and realleges each and every allegation set forth in paragraphs 1 through 40 above as if set forth in full herein.

42. This Statute violates the Commerce Clause of the United States Constitution, both on its face and as applied to Amazon. Under the Commerce Clause, a state may not require an out-of-state retailer to collect sales or use taxes from its consumers if the retailer lacks a "substantial nexus" with the state. *E.g., Quill*, 504 U.S. at 311. In order to constitute a "substantial nexus," the retailer must have a sufficient "physical presence" in the state, including, for example, solicitation by in-state representatives on behalf of the retailer if that solicitation is "significantly associated with the taxpayer's ability to establish and maintain a market in the state." *Tyler Pipe*, 483 U.S. at 250-51; *see also Quill*, 504 U.S. at 301, 311.

43. The Statute impermissibly imposes tax-collection obligations on out-of-state retailers with (1) no physical presence in New York and (2) no in-state entities soliciting sales that are "significantly associated" with the retailers' "ability to establish and maintain a market" in New York. The Statute presumes solicitation constituting "substantial nexus," and because that presumption is functionally irrebuttable, it is a statutory end-run around *Quill* and runs afoul of the Commerce Clause.

44. In addition, this Statute is unconstitutional as applied to Amazon. Because it is practically impossible for Amazon to determine with certainty which of the thousands of online advertisers participating in the Associates Program are New York residents and then to *disprove* solicitation with respect to each of those independent website operators during the applicable tax year, the Statute accomplishes precisely what the State intended: It requires Amazon to collect sales and use taxes from New York customers, even though (1) Amazon has no physical presence in New York, and (2) it has no in-state representatives soliciting sales on its behalf, let alone any in-state solicitors whose activities are significantly associated with its ability to generate sales to New York customers. As applied to Amazon, the Statute is an unconstitutional

imposition of state sales and use tax-collection obligations, despite Amazon's lack of a substantial nexus with New York.

45. Amazon is informed and believes that defendants contend that the Statute is valid and constitutional.

46. Consequently, a present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties. Amazon seeks a declaration that this Statute is unconstitutional under the Commerce Clause and, therefore, that it is invalid and cannot be enforced, so Amazon is not required to comply with it.

AS AND FOR A SECOND CAUSE OF ACTION

For Declaratory Relief (Due Process)

47. Amazon repeats and realleges each and every allegation set forth in paragraphs 1 through 46 above as if set forth in full herein.

48. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. 14, § 1. The Due Process Clause of the New York Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." N.Y. CONST. art. 1, § 6.

49. This Statute violates Due Process, both on its face and as applied to Amazon, in at least two respects:

(1) The Statute is impermissibly vague and overbroad. Among other reasons, it requires out-of-state retailers (even those without a physical presence in the State) to collect New York sales and use taxes if a resident advertiser "indirectly" refers customers to the retailer for a commission or other

consideration (provided that the resulting sales reach a certain combined annual dollar minimum). In addition, because the Statute applies to direct or indirect referrals "by a link on an internet website or otherwise," it captures any and all out-of-state retailers who advertise their products or services in New York, whether on the internet, in New York print media, or on New York television or radio outlets. Moreover, the Statute presumes that New York "resident" advertisers necessarily target and reach New York consumers with their advertisements, which is not the case for Internet website advertisers, whose sites transcend geographic boundaries. Premising tax-collection obligations—and thus significant civil and criminal penalties for non-collection—on "indirect" referrals is unduly vague and overbroad because it leaves out-of-state retailers to guess at whether they fall within the Statute's ambit and, if so, to disprove the vague requirement of indirect solicitation. As a result, countless out-of-state retailers will be forced to collect New York sales and uses taxes based on only the slightest connection to the State.

(2) The Statute's presumption is effectively irrebuttable, and it denies out-of-state retailers in general, and Amazon in particular, the right to fairly contest the Statute's application. The presumption thus operates to effectively eliminate the critical element of solicitation—and therefore a substantial nexus with the State—under the Commerce Clause.

50. This Statute therefore violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause of the New York Constitution.

51. Amazon is informed and believes that defendants contend that the Statute is valid and constitutional.

52. Consequently, a present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties. Amazon seeks a declaration that this Statute is unconstitutional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause of the New York Constitution, and that the Statute therefore is invalid and cannot be enforced, so that Amazon is not required to comply with it.

AS AND FOR A THIRD CAUSE OF ACTION

**For Declaratory Relief
(Equal Protection)**

53. Amazon repeats and realleges each and every allegation set forth in paragraphs 1 through 52 above as if set forth in full herein.

54. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. 14, § 1. The Equal Protection Clause of the New York Constitution provides that “[n]o person shall be denied the equal protection of the laws of this State or any subdivision thereof.” U.S. CONST. art. 1, § 11.

55. The Equal Protection Clause prohibits government action intentionally directed at a “class of one” and motivated by animus. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam); *id.* at 565-66 (Breyer, J., concurring). This Statute is targeted at Amazon. It was carefully crafted to increase state tax revenues by forcing Amazon to collect sales and use taxes, despite its lack of a substantial nexus with the State. Moreover, state officials have described the Statute as the “Amazon tax.”

56. This Statute therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Equal Protection Clause of the New York Constitution.

57. Amazon is informed and believes that defendants contend that the Statute is valid and constitutional.

58. Consequently, a present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties. Amazon seeks a declaration that the Statute is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Equal Protection Clause of the New York Constitution, and that the Statute therefore is invalid and cannot be enforced, so that Amazon is not required to comply with it.

PRAYER FOR RELIEF

WHEREFORE, Amazon requests that this Court issue a judgment against all defendants:

1. Declaring and adjudging that:

a. The Statute is unconstitutional under the Commerce Clause of the United States Constitution, and therefore is invalid and cannot be enforced;

b. The Statute is unconstitutional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and/or the Due Process Clause of the New York Constitution, and therefore is invalid and cannot be enforced;

c. The Statute is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and/or the Equal Protection Clause of the New York Constitution, and therefore is invalid and cannot be enforced; and

- d. Amazon is not required to comply with the Statute on grounds that it is unconstitutional and invalid;
2. Awarding Amazon the costs and disbursements of this proceeding; and
3. Granting such other and further relief, legal or equitable, as the Court deems just and proper.

Dated: New York, New York
April 17, 2008

Respectfully submitted,

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